least the force and legal effect of a stipulation of fact. [*Cf. Richfield Oil Corp. v. State Board,* 329 U.S. at 73[4] . . . No other defense has been pleaded. No other defense or issue may be raised or decided." *Id.* at 10.

None of appellant's reasons for urging the finality requirement supports appellant's conclusions:

1. *Law of the case.* Appellant cites four California cases[5] to support its argument that "law of the case" in California practice satisfies the finality requirement, leaving only the Commerce Clause issue to be decided in the ultimate disposition of this case. In none of the four cases was the law of the case discussed in relationship to a trial court proceeding to secure a preliminary injunction or an appeal from such a trial court proceeding. The most recent of the four cases states limitations which render law of the case inapplicable:

> ". . . [T]he point of law involved must have been necessary to the prior decision, [and] the matter must have been actually presented and determined by the court, . . ." *Pigeon Point Ranch, Inc. v. Perot, supra,* 59 Cal. 2d 227, 231, 379 P. 2d 321, 322 (1963).

Limitation of law of the case to matters (a) necessary to decision and (b) in fact presented and determined precludes applying law of the case to Fairfax's

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[4]Appellant's citation to *Richfield* should be "*But cf.*" In *Richfield* there *was* a stipulation, which the court carefully distinguished from an admission on the pleadings. See page 10, *infra.*

[5]*Tally v. Ganahl,* 151 Cal. 418, 421, 90 Pac. 1049, 1050 (1907); *Pigeon Point Ranch Inc. v. Perot,* 59 Cal. 2d 227, 230-32, 379 P. 2d 321, 322-23, 28 Cal. Rptr. 865, 866-67 (1963); *Berry v. Maywood Mut. Water Co.,* 13 Cal. 2d 185, 186, 88 P. 2d 705, 706 (1939); *Pellett v. Sonotone Corp.,* 26 Cal. 2d 705, 708, 160 P. 2d 783, 785 (1945).

situation.[6] The decree of preliminary injunction preserves only the status quo pendente lite and does not conclude issues which may be presented and determined in the suit for permanent injunction. *A fortiori,* an appeal from a temporary injunction in which appellant refrains from raising issues which might have been presented to the appellate court does not provide the law of the case with respect to those issues when the trial court later decides whether to grant or refuse a permanent injunction.

In *Paul v. Allied Dairymen, Inc.,* 209 Cal. App. 2d 112, 25 Cal. Rptr. 595 (1962), the District Court of Appeal reversed a trial court which, on motion for preliminary injunction, dismissed the cause of action for permanent injunction. The court said, 209 Cal. App. 2d at 121-22, 25 Cal. Rptr. at 600-601:

> "The hearing before the trial court was solely on an application for a preliminary injunction; it was not a motion for judgment on the pleadings (in fact, the only existent pleading at the time of the hearing was the complaint), nor a motion for summary judgment, and there is no stipulation in the record that the merits of the case should be determined on the evidence received on this preliminary hearing; instead of ruling on the motion for a preliminary injunction, the court

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[6]The California Supreme Court has said that law of the case may be invoked although the matter determined in a prior appeal is not "absolutely necessary" to decision in that appeal. *Steelduct Co. v. Henger-Seltzer Co.,* 26 Cal. 2d 634, 643, 160 P. 2d 804, 809 (1945). However, there has been no departure from the view that the doctrine of law of the case "does not extend to the facts or to points of law which might have been but were not presented and determined on a prior appeal." *Steelduct Co. v. Henger-Seltzer Co., supra,* 26 Cal. 2d at 644, 160 P. 2d at 809; *Trower v. San Francisco,* 157 Cal. 762, 765, 109 Pac. 617, 618 (1910).

took the matter in its own hands and dismissed the suit on a theory of lack of jurisdiction.

"It is elementary that the ultimate rights of the parties are not determined in connection with an application for preliminary injunction. In French Art Cleaners v. State Board etc. Cleaners, 91 Cal. App. 2d 890, 897 [206 P.2d 25], it is said:

" 'The effect of a preliminary injunction is explained in 14 California Jurisprudence, pages 184-185 as follows: "The granting or denial of a preliminary injunction does not amount to an adjudication of the ultimate rights in controversy. It merely determines that the court, balancing the respective equities of the parties, concludes that, pending a trial on the merits, the defendant should or should not be restrained from exercising the rights claimed by him. Indeed, when the cause is finally tried it may be found that the facts require a decision against the party prevailing on the preliminary application. *It therefore follows that an appellate court in passing upon the propriety of the issuance or dissolution of a preliminary injunction will not determine the merits of the case in advance of the trial,* and its decision as to the propriety of granting the writ is no intimation of what the judgment of the lower court should be at the final hearing; nor is it the law of the case in a subsequent appeal from the final judgment on the merits." (Emphasis added.)' (See also O'Shea v. Tile Layers Union, 155 Cal. App. 2d 373, 378 [318 P.2d 102]; Froomer v. Drollinger, 183 Cal. App. 2d 787, 789 [7 Cal. Rptr. 268].)

"The general rule with respect to a decision on the merits in connection with an application for preliminary injunction is thus stated in 43 Corpus Juris Secundum, Injunctions, section 213, page 946: 'Unless defendant defaults in pleading, it is improper to render a final decree granting a perpetual injunction on the basis of the evidence produced on the hearing of an application for a preliminary injunction.' (Citing Ruiz v. Alfonso (La. App.) 1 So. 2d 330.)

"In the case of Anderson v. Joseph, 146 Cal. App. 2d 450, 454 [303 P.2d 1053], the rule controlling such procedure is laid down in all stringency as follows: 'In any event, unless based upon stipulation or other satisfactory showings submitting the cause on the merits, *the court was without jurisdiction to determine the merits upon the hearing of a motion for a temporary injunction and the orders purporting to do so are void.*' (Emphasis added.) (See also 27 Cal. Jur. 2d, Injunctions, § 10, pp. 114-115, as amended in 1962 Cum. Supp., p. 17, referring to p. 115, line 6 of the text.)"

We believe that the foregoing quotation accurately states the law of California in regard to matters decided on a motion for a preliminary injunction and hence with respect to the applicability of "law of the case" when an appeal from a preliminary injunction is followed by a trial related to a permanent injunction. Our concern is not so much with the Commerce Clause issue as with other issues which appellant has already raised at some point in the courts below or may raise hereafter.

Appellant misstates the record in this regard (Jd. Statement, p. 6):

> "The only defense pleaded by Fairfax was that the licensing provisions of the California Small Loan Law, as applied to Fairfax to require it to obtain California's license and to pay a license tax as a condition of engagement in its interstate lending business, were repugnant to the Commerce Clause of the Constitution of the United States. [Clk. Tr. p. 16, lines 3-11; p. 16, line 24, to p. 18, line 15.]"

By contrast, we quote with our emphasis added paragraph III of the Affirmative Defense contained in appellant's answer to our complaint in the trial court, page 18, lines 1-15 (the concluding portion of the record cited by Appellant):

> "The California Small Loan Law, on its face, and as sought to be applied to defendant, is void and unconstitutional in that:
>
> "(a) It is a direct burden upon, and an attempt to regulate, control and limit, interstate commerce in violation of clause 3 of section 8 of article I of the Constitution of the United States.
>
> "(b) *It provides for and purports to permit, without any guarantee of notice or of an opportunity to be heard, the prohibition of the doing business by defendant by an order of an administrative official, in violation of the due process and equal protection clauses of section 1 of the Fourteenth Amendment to the Constitution of the United States.*"[7]

[7]Appellant also raised, in its answer, the defense that it was not negotiating or making small loans in California. We agree with

Obviously, the decision of the District Court of Appeal affirming the Preliminary Injunction is not the law of the case with respect to the issue appellant tendered in the emphasized portion of its answer, just quoted.

2. *Appellant's concession.* Appellant refers to its "concession of an absence of any other or different facts bearing upon the federal question, which appellant has made in this [Jurisdictional] Statement." Jd. Statement, p. 9. We would like to read this as a concession that an adverse decision on the Commerce Clause issue would conclude appellant's rights and would entitle the People of California to a permanent injunction as prayed. *Cf. Steelduct Co. v. Henger-Seltzer Co.,* 26 Cal. 2d at 644, 160 P. 2d at 809. We would like also to be assured that appellant would, by such a concession, be precluded from changing its mind.

Unfortunately, nothing appellant has expressly told this Court or any of the courts below appears to commit appellant to the abandonment of all issues but the Commerce Clause. Indeed, appellant concluded its Petition for Hearing in the Supreme Court of California with an argument based on *Allgeyer v. Louisiana,* 165 U.S. 578 (1897), and *State Board of Insurance v. Todd Shipyards Corp.,* 370 U.S. 451 (1962) (insurance cases), that the California Small Loan Law, if constitutional under the Commerce Clause, violates the

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appellant, however, that sufficient facts are admitted in the pleadings to permit the superior court on remand to find as a matter of law that appellant's loans *are* negotiated in California.

Due Process Clause. Appellant's Petition for Hearing in the Supreme Court after Decision by a District Court of Appeal, p. 24. Hence, we need not reach the issue of the effect of a concession or stipulation in satisfying the finality requirement. We do not have such a concession or stipulation.

3. *Conclusive admission of facts.* Appellant's assertion that "the facts have been conclusively admitted" (Jd. Statement, p. 10) is based on California Code of Civil Procedure section 462 (Jd. Statement, p. 5, n. 2), which provides that "every material allegation of the complaint, not controverted by the answer, must, for the purposes of the action, be taken as true; . . ." However, section 473 of the same code provides liberal discretion in the trial court to permit amendment of the pleadings.

Pleadings do not have, in California practice, "the force and legal effect of a stipulation of fact." This is the precise teaching of *Richfield Oil Corp. v. State Board of Equalization,* 329 U.S. 69, 72-73 (1946), where the final judgment requirement for purposes of appeal to this Court was held to be satisfied *because there was a stipulation.*

However, even if the pleadings did conclusively establish the facts pleaded, this would not conclude the trial court's inquiry into additional facts. *Perez v. Perez,* 111 Cal. App. 2d 827, 828-29, 245 P. 2d 344, 345 (1952). In its Petition for Hearing in the Supreme Court of California, Fairfax complained first of the

relevance of facts recited in the District Court of Appeal's opinion with respect to residence of Fairfax's officers. Then it went on:

> ". . . They are, in any event, incompetent, being found in the record only as hearsay statements in a declaration of a deputy attorney general filed in support of an application for an order for publication of summons. [Clk. Tr. p. 9, lines 8-29.] Hearsay in an affidavit of declaration is just as incompetent as hearsay from the witness stand."
>
> Petition for Hearing in the Supreme Court after Decision by a District Court of Appeal, p. 5, n. 5.

We fully recognize that the major thrust of appellant's argument, in the courts below as well as here, has been directed at the Commerce Clause issue. It is nevertheless clear beyond dispute that the Commerce Clause issue has not been, in any sense, Fairfax's only asserted defense. It is clear that there has been no waiver of other defenses, unless Fairfax has made such a waiver in its jurisdictional statement in this Court. It is clear that Fairfax has not precluded itself, nor have we, from presenting additional evidence, even on the Commerce Clause issue, in a trial on the merits for a permanent injunction.

Both the letter and the policy of the final judgment requirement, on the present state of the record, dictate dismissal of the appeal for lack of jurisdiction.

II.

Appellant Presents No Substantial Federal Question Because, in the Absence of Any Applicable Federal Regulation of the Small Loan Business, California's Nondiscriminatory Regulation Is Clearly Valid Under the Commerce Clause of the United States Constitution.

Broadly stated, the issue presented herein is whether the Commerce Clause of the United States Constitution deprives California of the ability to protect California borrowers in their dealings with foreign lenders as thoroughly as the borrowers are protected in their dealings with purely local lenders.

First enacted in 1939, California's Small Loan Law is similar in many respects to Kentucky's law. It is modeled on one of several drafts promulgated by the Russell Sage Foundation after a study beginning in 1907. By 1953, 38 states, with over 80 percent of the national population, had small loan laws substantially based on one of the drafts by the Russell Sage Foundation. Henderson, *The Future of the Loan Shark and Consumer Credit Agencies,* 19 Law & Contemp. Prob. 127, 128 (1954).

The license requirement of California's Small Loan Law and the regulatory requirements concomitant therewith apply to all lenders, foreign and domestic. Fin. Code §§ 24007, 24200, 24206; Calif. Adm. Code, Tit. 10, Art. 1, § 1407.*

California's law is not a revenue measure. *Cf. Cox v. New Hampshire,* 312 U.S. 569, 576-77 (1941); *Gt. Northern Ry. v. Washington,* 300 U.S. 154, 160-

*See Appendix.

62 (1937). The initial charge of $100 for investigation of license applications and the continuing charge of $200 per year is, as the court below declared, "no larger in amount than is reasonably necessary to defray the administrative expenses involved." Jd. Statement, App. "A," p. 4.

The California Supreme Court in 1940 upheld the Small Loan Law against assaults on its contitutionality which the court described as so "many and varied" they left "unchallenged practically nothing but the punctuation." *In re Fuller,* 15 Cal. 2d 425, 439, 102 P. 2d 321 (1940). The California Supreme Court's opinion in *Fuller* contains an excellent description of the abuses which have made small loan legislation a necessary supplement to the usury laws. Necessitous condition of borrowers, their frequent ignorance and inability to avoid unconscionable transactions, finance charges ranging as high as 1300 percent, all added to make the Small Loan Act a necessity to protect the public from fraud, deceit, and sharp practices in the making of loans.[8]

Fairfax has followed practices which are contrary to California state law. Its inviting literature ("Get the

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[8]California Financial Code section 24206 states:

"Upon the filing of the application and the payment of the fees and the approval of the bond, the commissioner shall investigate the facts and if he finds that the financial responsibility, experience, character, and general fitness of the applicant, and its members if the applicant is a copartnership or association, and its officers and directors if the applicant is a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purposes of this division, he shall issue and deliver a license to the applicant to engage in business in accordance with the provisions of this division at the location specified in the application. (Stats. 1951, c. 364, p. 1148, § 24206.)"

CASH you want for any good reason By MAIL—privately") contains this misleading assurance:

> "RATES SET BY LAW—The cost of the loan depends on how much you borrow and how long you keep it. To this extent you control the cost. Our rates conform with the provisions of the State Law governing the making of loans. You can now borrow the money you need and repay in monthly payments, fitted to your paydays and income." [Clk. Tr. p. 5-F.]

Unsophisticated California borrowers may be excused from failing to understand that by "State Law" Fairfax means "Kentucky State Law." In fact, Fairfax's rates exceed those permitted by California law.[9]

Fairfax's contacts with residents of California are substantial and numerous. Although licensed under the Kentucky Small Loan Law, all of its officers are in Chicago. [Clk. Tr. pp. 2, 9.] It lends in 32 states; only since March 1963 in California. Yet, as of the filing of the complaint herein in December 1963, over one-sixth of its $22,000,000 outstanding in loans, or $3,500,000, were to California residents. This $3,500,000 in Cali-

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[9]Rates for Fairfax loans are higher than permitted by §§ 24451, 24452 and 24454 of the California Financial Code. The Fairfax note [Clk. Tr. p. 5-H] provides for charges at the rate of 2.5 percent per month on unpaid balances not in excess of $150, and 2 percent per month on unpaid balances exceeding $150 but not exceeding $500. These rates are ½ of 1 percent per month in excess of the rates locally permitted for loans from $100 to $150. (§ 24452.) Fairfax also makes a charge of $.75 per $100 of credit life insurance. [Clk. Tr. p. 5-F.] When this fee is added as a charge for the loan, all of Fairfax's rates exceed those rates permitted by § 24452. California permits credit life insurance, but not at the expense of raising the maximum finance charge. (§ 24454.) Kentucky permits lenders to add a charge for credit life insurance to the maximum finance charge.

fornia loans increased at the rate of $90,000 per week. [Affidavit of Albert R. Bell, Clk. Tr. pp. 19-22.] These figures do not permit segregation of Fairfax's loans subject to regulation—*i.e.*, those of $300 or less—but doubtless such loans make up a significant portion of the total.

Appellant's contention that its activities in California cannot be regulated or licensed under the Commerce Clause is based primarily on the drummer type cases (*e.g., Crutcher v. Kentucky,* 141 U.S. 47, 58 (1891); *International Textbook Co. v. Pigg,* 217 U.S. 91 (1910); *Eli Lilly & Co. v. Sav-On-Drugs,* 366 U.S. 276 (1961)) and on interstate transportation cases (*e.g., Edwards v. California,* 314 U.S. 160 (1941); *Sault Ste. Marie v. Int'l Transit Co.,* 234 U.S. 333 (1941)).

Fortunately, the constitutional attack has no substance. Major predicate of the assault is the dictum, quoted from *Crutcher v. Kentucky,* 141 U.S. 47, 58 (1891): "We have repeatedly decided that a state law is unconstitutional and void which requires a party to take out a license for carrying on interstate commerce, . . ." (Quoted in Jd. Statement, p. 11.)

We have no quarrel with *Crutcher v. Kentucky,* which held invalid a Kentucky statute requiring a license in order to do an interstate express business. Nor have we any quarrel with the dictum quoted from a court which in 1891 had no reason to suspect that a mail order small loan business—any more than a mail order insurance business[10]—is interstate commerce. We do quarrel with Appellant's wrenching the 1891 dictum

[10]The *Crutcher* court noted expressly that its decision did not apply to insurance and other matters within the state's police power to regulate. 141 U.S. at 59, 61. See footnote 11, *infra,* p. 20.

from its historic context and identifying it as "an unbroken line of decision" for which the collection of seventeen cases in *Memphis Steam Laundry v. Stone,* 342 U.S. 389, 392, n.7 (1952), is cited by appellant. Here is the proposition for which that court cited those seventeen cases (342 U.S. at 392-93):

> "In the long line of 'drummer' cases, beginning with Robbins v. Shelby County Taxing District, 120 U.S. 489 (1887), this Court has held that a tax imposed upon the solicitation of interstate business is a tax upon interstate commerce itself. . . ."

The seventeen cases cited in note 7 are identified by the court as "cases in this Court following the *Robbins* decision." *Memphis Steam Laundry* itself may be taken as epitomizing the principle. It held invalid a $50 per vehicle tax imposed by Mississippi on laundry trucks soliciting business and laundry "for a laundry not licensed in this state as such." The statute was invalid alternatively because it was a tax imposed on interstate commerce itself, or if imposed only on Mississippi incidents of interstate commerce, it was discriminatory because not applicable to Mississippi laundry trucks. There is nothing of that problem here. The tax and the license requirement are imposed only on the incident of negotiation of small loans within the State of California, whether by California or non-California lenders. We do not have here any tax imposed for revenue purposes.

Any "unbroken line of decision" on which appellant may rely was fractured irreparably by *Robertson v. California,* 328 U.S. 440 (1946).

Robertson v. California, arose after *United States v. Southeastern Underwriters,* 322 U.S. 533 (1944),

and thus is a decision rendered on the premise that the insurance transactions there involved were interstate commerce, 328 U.S. 440, 447, 461-62.

In the *Robertson* case, California would not grant any insurance company a certificate of authority to transact insurance in California unless certain reserve and capital requirements were met. 328 U.S. 440, 454-55; Calif. Ins. Code § 700, *et seq.* These requirements, enforced by requiring a license, were meant to protect the public from fraud, misrepresentation, and sharp practice in the selling of insurance. 328 U.S. 440, 447. The defendant insurance agent claimed that the *Southeastern Underwriters* case precluded California from regulating the company's solicitation and writing of insurance in California, and further that the California law discriminated against the out-of-state insurer. 328 U.S. at 455-56.

Though no actual fraud, misrepresentation, deceit, or sharp practice was shown on the part of the particular company (328 U.S. at 460), the Supreme Court held: (1) that the California law was not discriminatory because the same requirements applied to foreign and domestic companies alike, and (2) that California, in protecting its citizens, could exclude any insurance company not meeting her reserve, capital, and licensing requirements. 328 U.S. at 456-57.

The court said (328 U.S. at 458-59):

> ". . . we are far beyond the time when, if ever, the word 'license' per se was a condemnation of state regulation of interstate business done within the state's borders. The commerce involved here is not transportation. Nor is it of a sort which touches the state and its people so lightly that local

> regulation is inappropriate or interferes unreasonably with the commerce of other states. Not the mere fact or form of licensing, but what the license stands for by way of regulation is important. So also, it is not simply the fact of prohibition, but what is forbidden and for the protection of what interest, that is determinative. For the commerce clause is not a guaranty of the right to import into a state whatever one may please; absent a prohibition by Congress, regardless of the effects of the importation upon the local community. That is true whether what is brought in consists of diseased cattle or fraudulent or unsound insurance."

Or, we add, improper or potentially improper loans.

To the same effect is *Union Brokerage Co. v. Jensen*, 322 U.S. 202, 212 (1944):

> "The Commerce Clause does not . . . preclude a State from giving needful protection to its citizens in the course of their contacts with businesses conducted by outsiders when the legislation by which this is accomplished is general in its scope, is not aimed at interstate or foreign commerce, and involves merely burdens incident to effective administration."

Appellant argues that *Robertson* lays down no rule of general application but was tailored to a temporary insurance situation. Jd. Statement, p. 14. It is submitted that this Court took no such limited view of the rules announced in the *Robertson* case. In footnotes 25 and 28 to that case, 328 U.S. at 458-59, the court listed several cases involving regulation other than that of insurance in which results compatible with *Robertson* were

reached. The *Robertson* case itself has been applied to state regulation of matters other than insurance. *Independent Warehouse v. Scheele,* 331 U.S. 70, 85 (1947) (upholding a license tax as applied to warehouses storing interstate coal shipments); *Mercer v. Hemmings* (Fla.), 170 So. 2d 33, 38-39 (1965) (local licensing of out-of-state public accountants).

Where Congress has not acted, state statutes regulating interstate commerce are constitutional vis-a-vis the Commerce Clause provided they neither discriminate against nor substantially obstruct the commerce. *Robertson v. California,* 328 U.S. 440, 449; *California v. Thompson,* 313 U.S. 109, 114. In *Breard v. Alexandria,* 341 U.S. 622, 633-37, especially notes 15-22 thereto, the court pointed up the distinction between those cases in which the license is a means of police power regulation of a particular business for the protection of the local public and those cases in which the licensing statute serves to discriminate against interstate commerce or substantially to obstruct or exclude interstate commerce. The license in *Robertson* was upheld because it was of the regulatory rather than exclusionary nature. *Cf. International Textbook Co. v. Pigg, supra,* 217 U.S. 91 (1910). The license involved here is also a regulatory one.

Appellant's reliance on cases involving interstate transportation is also misplaced. These are areas of regulation in which, unlike the instant problem, the courts have expressed a need for national uniformity. *E.g., Edwards v. California,* 314 U.S. 160, 175-76. To be sure, *Edwards* held that California cannot exclude the entry of persons from other states. However, it did not say that once they were here we cannot

require them to obtain California driver's licenses. In the instant case, we are not attempting to keep Fairfax out, but now that it is in California, we ask that Fairfax obtain the same license held by all other members of the small loan business. That we may constitutionally require Fairfax to do so is shown by the parallel of the instant case to *Robertson v. California, supra,* 328 U.S. 440.[11]

Finally, Appellant attempts to discredit the decision of the District Court of Appeal by stating in paragraph "Third" at page 14 of its Jurisdictional Statement, that the District Court of Appeal said

> "that *because,* under the doctrine of International Shoe Co. v. Washington, 326 U.S. 310, California courts could probably obtain personal jurisdiction over Fairfax, the State had power to impose the requirements of a license to engage in its interstate business." (Emphasis added.)

We italicize the "because," which is a word the District Court of Appeal did not use, either expressly or by implication. We read the opinion as referring to *International Shoe Co. v. Washington* to illustrate the effect of a local nexus, in addition to negotiation, collection, and other substantial lending activity, which tends to illustrate the necessity of local regulation.[12] All the

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[11]The instant situation differs not at all from the problems of insurance regulation discussed in *Robertson.* Prior to *Southeastern Underwriters* neither insurance nor loan contracts were considered to be commerce. *Paul v. Virginia,* 8 Wall. 168 (1868); *Standard Home Co. v. Davis,* 217 Fed. 904, 915 (D.C.E.D. Ark.) (1914). The right of states to license these businesses was unquestioned. *Robertson* illustrated that even after *Southeastern Underwriters,* and before the McCarran Act, the states could continue to license the business of insurance. This same result should follow for the lending business.

[12]It should be noted that the courts below have found that with the exception of the final acceptance of the loan agreement by

court below concluded was that the state can regulate the small loan business, even that of a foreign lender, where there is a substantial local nexus with, and impact of that business on, local borrowers.

For the public's present and future protection, California asks only that Fairfax meet the same requirements that must be met by any company in the small loan business in California. If appellant's contentions were accepted, foreign lenders could disregard our regulatory and licensing requirements. The state would be helpless to protect its citizens against loosely regulated foreign lenders. The historical system of state control of lending would break down. Since Congress has enacted no small loan legislation a vacuum would be created in which the standards for the industry, in-state as well as foreign, would be set by the state with the least restrictive regulations, or no regulations at all. The small loan laws of the states having over 80 percent of the population would be, for all practical purposes, frustrated.

In similar circumstances, on more than one occasion, this Court has demonstrated its antipathy, absent some expression by Congress, to overturning state regulatory legislation where an absence of any regulation would result. *Robertson v. California, supra,* 328 U.S. 440, 459-60; *California v. Thompson,* 313 U.S. 109, 115.

Far reaching implications — all of them bad — would flow only from a reversal of the decision below. None of consequence would flow from the affirmance, except enforcement of a California law in effect since 1939.

Fairfax, and the sending of the check to the borrower, everything relative to the loan, including negotiation, takes place in California.

Conclusion.

The judgment appealed from is not final. Even if the judgment were final, no substantial federal question is involved in this appeal. The right of California to regulate by means of a license the local contacts of a foreign lender is sustained by clear authority. Therefore, this appeal should be dismissed.

Respectfully submitted,

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